

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Basic Cable Service and Equipment Rates of	)	
Charter Communications Entertainment I, LLC,	)	File No. CSB-A-0720
St. Louis, MO (CUID No. MO0545)	)	
	)	
Appeal of Local Rate Order	)	

**ORDER**

**Adopted: February 11, 2005**

**Released: February 14, 2005**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. On August 23, 2004, Charter Communications Entertainment I, LLC ("Charter"), the franchised cable operator serving the community of St. Louis, Missouri, appealed a local rate order ("LRO"),<sup>1</sup> adopted by the City of St. Louis, Missouri ("St. Louis") on July 23, 2004. Among other things, the LRO required Charter to include its franchise fees that are based on non-subscriber revenue in its FCC Form 1240 calculations. The LRO also required Charter to calculate its charges for "unreturned equipment" using FCC Form 1205. St. Louis filed its opposition to the appeal on September 7, 2004 and Charter filed a reply to the opposition on September 14, 2004.<sup>2</sup> Based upon our review of the record, we grant the appeal in part and remand the LRO for further consideration consistent with this Order.

**II. STANDARD OF REVIEW**

2. Rate orders issued by franchising authorities may be appealed to the Commission pursuant to section 623 of the Cable Act and the Commission's rules.<sup>3</sup> In ruling on appeals of local rate orders, the Commission does not conduct a *de novo* review, but will sustain a franchising authority's decision as long as

<sup>1</sup> The LRO is identified locally as Resolution Number 100. On September 2, 2004, Charter filed a corrected copy of Attachment E to the appeal.

<sup>2</sup> In its Reply, Charter withdrew an issue raised in its appeal, a request that the Commission confirm that "cable operators are entitled to itemize the entire franchise fee assessment as a single percentage entry on customer bills." Appeal at 9.

<sup>3</sup> 47 U.S.C. § 543(b)(5)(B); 47 C.F.R. § 76.944.

there is a reasonable basis for the decision.<sup>4</sup> The Commission will reverse a franchising authority's rate decision only if it determines that the franchising authority acted unreasonably in applying the Commission's rules. If the Commission reverses a franchising authority's decision, it will not substitute its own decision but instead will remand the issue to the franchising authority with instructions to resolve the case consistent with the Commission's decision on appeal.

### III. DISCUSSION

#### A. Franchise fee calculations

3. Pursuant to section 622 of the Cable Act, franchise fees paid by a cable company to a local franchising authority under the terms of any franchise are limited to five percent of the cable company's annual gross revenues.<sup>5</sup> Franchise fees may be passed through to subscribers as a separate line item.<sup>6</sup> The Commission determined that the Cable Act does not limit the assessment of franchise fees to revenue generated from subscription service only; franchise fees may also be calculated using non-subscriber based revenues such as advertising sales and home shopping commissions.<sup>7</sup> Furthermore, the entire franchise fee assessment may be passed through to subscribers.<sup>8</sup>

4. In its appeal, Charter argues that the LRO requirement that non-subscriber revenue-based franchise fees be calculated on the FCC Form 1240 is unreasonable because it is both contrary to the Commission's previous instructions regarding the reporting of franchise fees on the FCC Form 1240 and will distort the FCC Form 1240 rate calculation, requiring further adjustments to the rate. St. Louis responds that the LRO approach is a reasonable use of the FCC Form 1240 because the FCC Form 1240 contains a true-up mechanism which will allow for corrections in the amount of franchise fees collected and because using an established FCC Form mirrors approved Commission methods. Neither party disputes the cable operator's obligation to provide an accounting of its franchise fee calculations or the city's authority to review those calculations for accuracy.

5. The Commission does not require cable companies and franchising authorities to calculate the franchise fee payment and pass-through amount on an FCC Form. To the contrary, the Commission has consistently excluded franchise fee calculations from the maximum permitted rate calculation on the FCC Form 1240.<sup>9</sup> St. Louis' argument that franchise fees based on non-subscriber revenue are somehow different from subscriber revenue-based franchise fees is unpersuasive. St. Louis has identified, and we find, no material distinction that would warrant an exception to the Commission's long-standing practice of excluding franchise fees from the FCC Form 1240. St. Louis' second

---

<sup>4</sup> *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Report and Order and Further Notice of Proposed Rulemaking*, 8 FCC Rcd 5631, 5731-32 (1993) ("Rate Order"); *Third Order on Reconsideration*, 9 FCC Rcd 4316, 4346 (1994) ("Third Reconsideration Order").

<sup>5</sup> 47 U.S.C. § 542.

<sup>6</sup> *Id.*

<sup>7</sup> See, e.g., *City of Pasadena, et al.*, 16 FCC Rcd 18192, 18198 at ¶ 15 and n.36 (2001)

<sup>8</sup> *City of Pasadena, et al.*, 16 FCC Rcd 18192 (2001), *pet. for rev. den. sub. nom.*, *Texas Coalition of Cities for Utility Issues, et al. v. FCC*, 324 F.3d 802 (5<sup>th</sup> Cir. 2003).

<sup>9</sup> See FCC Form Instructions at 2 ("The Commission's rules recognize seven categories of external costs . . . You may adjust your maximum permitted rate for changes in these categories of costs *except for franchise fees*, which are not included in your permitted rates but rather are simply added to them.") (emphasis added).

argument, that their proposal creates a reasonable and efficient methodology, is also without merit. The proposed methodology would require additional calculations to correct for the inclusion of non-subscriber revenue-based franchise fees as external costs in the maximum permitted rate. The maximum permitted rate is the basis for setting rates used to generate subscriber revenues upon which the subscriber revenue-based franchise fees are calculated. Failure to remove the additional franchise fees from this rate could result in excess subscriber revenue-based franchise fees being calculated and passed through to subscribers. Because we find that the LRO directly contradicts express Commission policy to exclude franchise fees from the FCC Form 1240 calculations, we find that St. Louis acted unreasonably in applying the Commission's rules.

## **B. Charges for "unreturned equipment"**

6. Charges for equipment which is used to receive the basic service tier are subject to regulation by the local franchising authority pursuant to section 623(b)(3) of the Cable Act and section 76.923 of the Commission's rules.<sup>10</sup> These charges are based on actual costs.<sup>11</sup> Cable operators annually calculate permitted cost-based equipment and installation rates using the FCC Form 1205.<sup>12</sup> At issue in this appeal is whether fees that Charter imposes on subscribers for failure to return equipment, such as converters, are subject to the Commission's equipment regulations and should be calculated on the FCC Form 1205.

7. In its appeal, Charter argues that St. Louis is without authority under the Cable Act and the Commission's regulations to review the fee Charter imposes on subscribers who fail to return converters or other equipment after discontinuing cable service. Charter argues that the fee is completely unregulated either because it is not included in the regulated equipment calculations on the FCC Form 1205 or because the transaction is equivalent to the sale of equipment. St. Louis responds that the fee is subject to the Commission's regulations, and therefore must be set at cost and reported on the FCC Form 1205. We conclude that fees for unreturned equipment do not fall within the framework of the Commission's cost-based equipment regulations; rather they belong to a category of fees, such as late payment fees, which are in the nature of penalties for breach of the contract ordering the relationship between the cable company and its subscribers.

8. The Bureau has ruled at various times that late payment fees are not subject to regulation under the Cable Act but are within the purview of local franchising authorities.<sup>13</sup> This includes both the customer service aspects of late fees as well as the rate charged for such fees and applies to other similar fees, such as converter equipment deposits.<sup>14</sup> We apply that same policy to the "unreturned equipment fees" at issue in this appeal. Local authorities may regulate the rates of such fees utilizing local or state laws provided that those laws permit such regulation.<sup>15</sup> Therefore, the resolution of the issue of the

---

<sup>10</sup> See 47 U.S.C. § 523(b)(3); 47 C.F.R. §76.923.

<sup>11</sup> *Id.*

<sup>12</sup> See FCC Form 1205, "*Determining Regulated Equipment and Installation Costs*" (May 1994, revised June 1996).

<sup>13</sup> See *Cablevision Industries*, 10 FCC Rcd 6624, 6625 (CSB 1995).

<sup>14</sup> See *Falcon Cablevision*, 11 FCC Rcd 10511, 10524 (CSB 1996). We note that the parties have acknowledged that the genesis of this controversy lies in the customer service area, due to the alleged imposition of the fee on customers who had in fact already returned the equipment.

<sup>15</sup> *Id.*

amount of the fee that can be charged requires an interpretation of applicable local law, not federal law, in accordance with local negotiation or the application of local or state consumer protection and customer service laws, and thus a state or local court is the appropriate forum to hear such matters.<sup>16</sup>

9. As to the requirement that the fee be calculated on the FCC Form 1205, we find this to be unreasonable. Although St. Louis may find that information contained on the FCC Form 1205 is essential to the calculation of a fair fee for unreturned equipment, there is no formula contained in the FCC Form 1205 that is designed to perform this calculation. Therefore, as with the franchise fees discussed above, we conclude that St. Louis may not require Charter to modify an existing FCC Form to include the calculation of fees that are outside the purview of the Commission's regulations. With very few well-defined exceptions, the Commission does not routinely approve of modifications to its standard forms.<sup>17</sup>

#### IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that the Appeal of Local Rate Order filed by Charter Communications Entertainment I, LLC on August 23, 2004 **IS GRANTED IN PART TO THE EXTENT INDICATED HEREIN** and the local rate order of the City of St. Louis, Missouri **IS REMANDED** for further consideration consistent with this Order.

11. This action is taken pursuant to authority delegated by § 0.283 of the Commission's rules.<sup>18</sup>

FEDERAL COMMUNICATIONS COMMISSION

John B. Norton  
Deputy Chief, Policy Division  
Media Bureau

---

<sup>16</sup> *Id.* We note that, although the amount of the fees are not regulated by the Commission's rules, converter losses included in the FCC Form 1205 calculations must be offset by any recovery of equipment costs pursuant to such fees. See, e.g., *TCI Cablevision of Oregon*, 14 FCC Rcd 17685 at ¶¶ 26-27 and nn.62-63 (CSB 1999), *vacated by settlement*, 16 FCC Rcd 13285 (CSB 2001).

<sup>17</sup> For an example of such a modification, see *Time Warner Cable*, 12 FCC Rcd 7579, 7582-83 (CSB/FACD 1996).

<sup>18</sup> 47 C.F.R. § 0.283.